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6 American Airlines

7 **UNITED STATES DISTRICT COURT**  
8 **DISTRICT OF NEVADA**

9 CSAA GENERAL INSURANCE  
10 COMPANY,

Case No.: 2:21-cv-02221-GMN-NJK

11 Plaintiff,

12 vs.

13 AMERICAN AIRLINES, a Delaware  
Corporation, RAQUEL CAETANO, an  
14 individual, JUSTIN PILAND, an individual,  
GILBERTO PASTOR GARCIA, an  
15 individual, WORLDWIDE FLIGHT  
SERVICES, INC., RYDER TRUCK  
16 RENTAL INC., a Florida Corporation,  
ELIZABETH A. COYLE, an individual,  
17 THOMAS F. COYLE, an individual,

18 Defendants.

19  
20 **MOTION TO DISMISS**

21 COMES NOW Defendant American Airlines as the employer of injured workers  
22 Caetano and Coyle and files this Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6)  
23 for failure to state a claim upon which relief can be granted. Plaintiff CSAA Insurance  
24 Company has failed to state a claim against Defendant American Airlines because  
25 CSAA's duty to indemnify will not arise until there is a judgment in the underlying action.  
26 Therefore, the action is not ripe as applied to Defendant American Airlines as employer  
27 of injured workers Caetano and Coyle. Even if there is jurisdiction regarding this action,  
28 the court should exercise its discretion and should abstain from accepting the case.

**MOTION TO DISMISS**

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1 **POINTS & AUTHORITIES**

2 I. FACTS

3 Plaintiff's Complaint alleges that on 05/16/2019 there was a vehicle collision.  
4 [ECF 1 ¶ 20]. Defendant American Airlines was the employer of Defendants Caetano  
5 and Coyle. Caetano, Coyle and Mireles were flight attendants. [ECF 1 ¶¶ 3, 4 and 10].  
6 They were travelling from their accommodations at a Las Vegas hotel to the airport so  
7 that they could complete the next leg of their assignment for American Airlines. They  
8 were in the course and scope of their employment. [ECF 1 ¶ 25]. Worldwide Flight  
9 Services, Inc. and its driver Garcia were operating the vehicle in which Caetano, Coyle  
10 and Mireles were passenger. [ECF 1 ¶ 28 – 32]. The vehicle was involved in an  
11 accident. [ECF 1 ¶ 20]. Caetano, Coyle and Mireles claimed injuries and filed workers  
12 compensation claims with American Airlines. American Airlines considered and paid  
13 those claims.

14 Plaintiff CSAA is an insurance company doing business in Nevada. [ECF 1 ¶ 2].  
15 Plaintiff alleges that CSAA insured driver Garcia. [ECF 1 ¶ 7].

16 American Airlines filed suit to protect its liens as to the recovery of its injured  
17 employees. Defendants Caetano, Coyle and Mireles have filed individual suits.  
18 Exhibits **A**, **B** and **C**. American Airlines' Complaints allege that Mr. Garcia and his  
19 employer were negligent. Exhibit **D** and **E**. Garcia has also filed a claim for personal  
20 injuries. Exhibit **F**. All of these actions are filed in the Eighth Judicial District Court,  
21 Clark County, Nevada. The actions have been consolidated.

22 The suits in the State Court actions are new. The Judge in the Eighth Judicial  
23 District Court held its initial NRCP Rule 16 Scheduling Conference on January 26, 2022.  
24 The Court set the Discovery Cut-Off for May 16, 2023. Exhibit **G**. The trial date will be  
25 set sometime thereafter. No judgment in the underlying action has been entered.

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**MOTION TO DISMISS**

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**LAW & ARGUMENT**

A. **THE COURT SHOULD DISMISS BECAUSE THERE IS NO CASE AGAINST AMERICAN AIRLINES AT THIS TIME.**

Rule 12(b) provides:

(b) How to Present Defenses. Every defense to a claim for relief in any pleading must be asserted in the responsive pleading if one is required. But a party may assert the following defenses by motion:

(1) lack of subject-matter jurisdiction;

\* \* \*

(6) failure to state a claim upon which relief can be granted; and

Defendant contends that the Plaintiff's Complaint fails to state a claim as against Defendant American Airlines.

It is anticipated that the Plaintiff will argue that there is a case and controversy even without a judgment in the underlying action. Am. States Ins. Co. v. Kearns, 15 F.3d 142 (9th Cir. 1994). However, American Airlines is not an insured of CSAA. There is no judgment by American Airlines against the CSAA insured defendant. The question of whether there is a duty to indemnify Garcia will not be ripe until there is a judgment.

Under Nevada law, the duty to indemnify does not arise until an insured becomes legally obligated to pay damages in the underlying action that gives rise to a claim under the policy. United Natl Ins. Co. v. Frontier Ins. Co., 120 Nev. 678, 686, 99 P.3d 1153, 1157 (2004). In Ticor Title Ins. Co. v. Am. Res., 859 F.2d 772, 777, n.7 (9th Cir. 1988), the Court said "courts normally dismiss declaratory judgment actions, especially where the federal relief sought may hinge upon the outcome of state court actions." In this case, any right that American Airlines may have will hinge on the outcome of the case.

B. **EVEN IF THE CASE WERE RIPE, THE COURT SHOULD ABSTAIN FROM EXERCISING ITS DISCRETIONARY JURISDICTION AND SHOULD DISMISS**

Even if the dispute were ripe and the court had jurisdiction, the court should refuse to exercise its jurisdiction in this action.

1 In the case of Pharmacists Mut. Ins. Co. v. C&R Pharmacy, No. 2:19-CV-350  
 2 JCM (BNW), 2020 U.S. Dist. LEXIS 84386, at \*7 (D. Nev. May 13, 2020), the court said:

3 "If the suit passes constitutional and statutory muster, the district court  
 4 must also be satisfied that entertaining the action is appropriate." Gov't  
 5 Employees Ins. Co. v. Dizol, 133 F.3d 1220, 1223 (9th Cir. 1998). "This  
 6 determination is discretionary, for the Declaratory Judgment Act is 'deliberately  
 cast in terms of permissive, rather than mandatory, authority.'" Id. (quoting Public  
Serv. Comm'n of Utah v. Wycoff Co., 344 U.S. 237, 250, 73 S. Ct. 236, 97 L. Ed.  
 291 (1952) (J. Reed, concurring)).

7 The court "must decide whether to exercise its jurisdiction by analyzing the  
 8 factors set out in Brillhart v. Excess Ins. Co., 316 U.S. 491, 62 S. Ct. 1173, 86 L.  
 Ed. 1620 (1942), and its progeny." Principal Life Ins. Co., 394 F.3d at 669. These  
 9 factors include: (1) avoiding needless determination of state laws; (2)  
 discouraging litigants from filing declaratory actions as a means of forum  
 shopping; and (3) avoiding duplicative litigation. See, e.g., Principal Life Ins. Co.,  
 10 394 F.3d at 672; Gov't Employees Ins. Co., 133 F.3d at 1225; Continental  
Casualty Co. v. Robsac Indus., 947 F.2d 1367, 1371-73 (9th Cir. 1991).

11  
 12 The Brillhart factors are laid out in the case of Acuity v. Cifuni, No. 2:19-cv-  
 13 01879-GMN-DJA, 2020 U.S. Dist. LEXIS 177908 (D. Nev. Sep. 28, 2020).

14 1. The Court Should Abstain From Exercising Jurisdiction and Should  
 15 Dismiss Because It Would Be A Needless Determination of State Law  
Issues

16 Jurisdiction is based on diversity of citizenship and the issue of insurance law is  
 17 an area that Congress has expressly left to the states. Cont'l Cas. Co. v. Robsac  
 18 Indus., 947 F.2d 1367, 1371 (9th Cir. 1991), overruled on other grounds by Dizol, 133  
 19 F.3d at 1227.

20 2. The Court Should Abstain From Exercising Jurisdiction and Should  
 21 Dismiss Because this Appears To Be A Means of Forum Shopping

22 This suit appears to be the a search for federal jurisdiction, where state court  
 23 would be the appropriate jurisdiction in light of the fact that federal law has left  
 24 insurance issues to the state. As stated in Pharmacists Mut. Ins. Co. v. C&R Pharmacy,  
 25 No. 2:19-CV-350 JCM (BNW), 2020 U.S. Dist. LEXIS 84386, at \*11 (D. Nev. May 13,  
 26 2020), the court said:

27 Although PMIC is not a party to the underlying case, a declaration of its  
 28 obligations under the policy are best addressed by the state court that will  
 determine liability for the underlying cases. PMIC's tactical decision to litigate in a  
 federal forum by filing the instant suit is necessarily "reactive" litigation.

1 Accordingly, dismissal is warranted because there is a presumption in favor of  
2 the state court resolving issues of state law.

3 This admonition would hold true for CSAA. While it is not a party to the  
4 underlying case, this issue would be better resolved under state law.

5 3. The Court Should Abstain From Exercising Jurisdiction and Should  
6 Dismiss Because This Will Amount to Duplicative Litigation

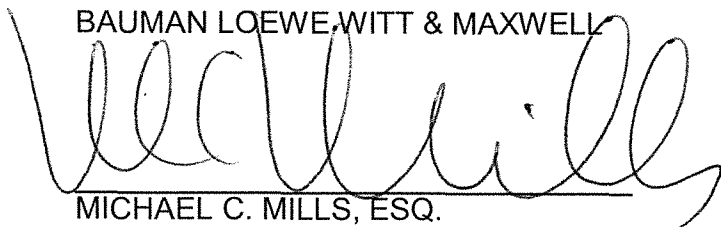
7 A decision regarding the facts of the case may well resolve the coverage issue  
8 and make this suit moot.

9 **CONCLUSION**

10 The Court should dismiss this action against Defendant American Airlines. There  
11 remain issues of liability regarding driver Garcia which will have to be resolved as  
12 factual disputes in the underlying action. If coverage litigation is necessary, State Court  
13 is the jurisdiction where this issue of coverage should be resolved. The Court should  
14 abstain from exercising jurisdiction.

15 DATED this 3<sup>rd</sup> day of February, 2022.

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**A** Complaint Caetano

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**B** Complaint Mireles

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**C** Complaint Coyle.

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**D** American Airlines suit re Caetano.

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**E** American Airlines suit re Mireles.

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**F** Complaint Garcia.

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**G** Scheduling Order.

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**MOTION TO DISMISS**

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